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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: APR 0 3 2012 OFFICE: TEXAS SERVICE CENTER [redacted]

IN RE: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will summarily dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a surgeon. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part, "[a]n officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On the Form I-290B Notice of Appeal, counsel checked a box reading "My brief and/or additional evidence is attached." Therefore, the initial appellate submission constitutes the entire appeal. The petitioner submitted no exhibits on appeal except for a copy of the denial notice.

The Form I-290B includes a space for the petitioner to "[p]rovide a statement explaining any erroneous conclusion of law or fact in the decision being appealed." Counsel states:

> The record reflects through [the petitioner's] leading roles at prominent medical institutions along with his history of outstanding clinical success in addition to his research contributions to the surgical field (specifically the highly specialized minimally invasive subspecialty of surgery) has demonstrated that (1) his work has had substantial intrinsic merit; (2) the impact of his work has spread beyond his hospital community and had a significant national influence in improving healthcare (numerous surgeons have utilized [the petitioner's] research in the clinical setting]; and (3) [the petitioner's] abilities are exceptional and stand above his peers, such that a waiver of the labor certification process would be in the national interest.

In an accompanying letter, counsel asserts generally that the petitioner "has made great contributions to the field . . . well attested to by both his peers with whom he has worked as well as independent testimonials from prominent members of the field at prominent institutions." The director, in the denial notice, acknowledged the witnesses' letters and quoted from several of them, but found them to be insufficient to establish the petitioner's eligibility for the benefit sought. Counsel, on appeal, does not acknowledge this discussion or explain how the director's conclusions were deficient. Counsel asserts only that the letters establish the petitioner's eligibility.

Counsel states that the medical societies to which the petitioner belongs do not require outstanding achievements, but states that "this is the norm." The director, however, did not raise the issue of the

petitioner's memberships as a basis for denial. Counsel further asserts generally that the petitioner "has judged the work of even senior peers on several [unspecified] levels." Counsel does not, however, allege any specific factual or legal errors or other deficiencies in the director's decision. Counsel merely asserts that, given (unidentified) "substantial evidence" of the petitioner's (unspecified) achievements, the director should have approved the petition. The director, in the denial notice, had acknowledged the "testimonials" mentioned by counsel, but found them to be unsubstantiated. Counsel does not respond to this finding.

Counsel, however, does not elaborate or explain how the director failed to take the petitioner's previous evidence into consideration. Counsel does not allege any specific factual or legal errors or other deficiencies in the director's decision. Counsel merely asserts that the director should have approved the petition, which is not a sufficient basis for a substantive appeal.

Because counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the AAO must summarily dismiss the appeal.

The AAO notes that [redacted] has since obtained a labor certification on the petitioner's behalf. The employer then filed a Form I-140 petition that included that labor certification. The director approved that petition on February 10, 2012. The petitioner is, therefore, the beneficiary of an approved immigrant petition with labor certification, in the same classification that he sought in the present proceeding.

ORDER: The appeal is dismissed.